

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**FILED**

DEC 31 2009

CLERK, U.S. DISTRICT COURT

By _____
DeputyIN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CRAIG CUNNINGHAM

Plaintiff,

VS.

INFINITY VACATIONS, LLC,
ET AL.

Defendants.

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NO. 3-09-CV-2338-L

ORDER

Defendants Infinity Vacations, LLC, Brad A. Cormack, Craig Narez, and Kyle Stoops have filed a Rule 12(b)(1) motion to dismiss the claims brought against them for violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, *et seq.*, and the Texas Deceptive Trade Practices Act ("TDTA"), Tex. Bus. & Comm. Code Ann. § 17.001, *et seq.* As grounds for their motion, defendants contend that federal courts lack subject matter jurisdiction of private actions under the TCPA, and that plaintiff's claim against Wachovia Corporation for violations of the Fair Credit Billing Act ("FCBA"), 15 U.S.C. § 1666, does not authorize the court to exercise supplemental jurisdiction over his TDTA claim.¹

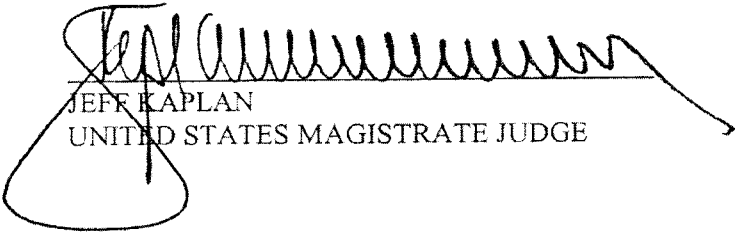
Plaintiff shall file a written response to the motion by **January 25, 2010**. Defendants may file a reply by **February 9, 2010**. The briefing limitations and other requirements of N.D.Tex. LCivR 7.1(d) & 7.2 shall apply to all pleadings. The court intends to rule on the motion without

¹ These same defendants also have filed a Rule 12(b)(4) & (5) motion to dismiss for insufficient service or, in the alternative, to quash service of process. The court will hold that motion in abeyance until it resolves the threshold issue of subject matter jurisdiction.

hearing oral argument based on the written submissions of the parties. *See* N.D.Tex. LCivR 7.1(g) ("Unless otherwise directed by the presiding judge, oral argument on a motion will not be held.").

SO ORDERED.

DATED: December 31, 2009.



JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE